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REMARKS

This Amendment is responsive to the Office Action dated July 28, 2005.

In that Action, the Examiner required Applicant to submit a new Substitute Specification for the application. Applicant is enclosing herewith a substitute specification for the application which corresponds to the original specification filed on January 23, 2004. A marked up version of the substitute specification is attached as Exhibit A and a clean version of the substitute specification is attached as Exhibit B. No new matter has been inserted.

Applicant is also enclosing a Transmittal of Formal Drawings to ensure that the proper drawings for the application are of record.

By this Amendment Applicant specifically submits that it is entitled to small entity status.

Original claims 1 and 2 were objected to and rejected under Section 112, second paragraph. Original claims 1 and 2 were also rejected under Section 102(b) in view of the Edwards patent.

Claims 1 and 2 have been cancelled without prejudice. Claims 3-31 have been added. No new matter has been inserted. Claims 3-31 remain pending in the application. Applicant respectfully requests reconsideration of the Examiner's rejection and the citation of the Edwards patent.

Applicant's novel invention is directed to a medical apparatus that normally requires a nurse or other ancillary medical personnel to oversee that the patient is actually using the apparatus and that the patient is performing the required procedure with said medical apparatus. Edwards is not concerned with these purposes and is not concerned with replacing the requirement of having to have a nurse or other assistant present.

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Given the calibration required for the Edwards' device, including the tools required for such calibration, this type of device is not of the type of medical apparatus covered by the present invention. Edwards requires ancillary medical assistance to calibrate his apparatus as no patient would have the tools needed. Applicant's medical apparatus are of the type that normally requires a nurse to oversee the patient procedures required. Applicant's claimed invention allows the patient to use these types of medical apparatuses on their own, and thus, reducing, if not eliminating, the need for ancillary medical assistance to be present with the patient. Applicant's claimed invention, through its transmission of relevant audible, verbal messages, leads the patient through the use of the medical apparatus in accordance with the guidelines for such medical apparatus.

Thus, as mentioned above, the Edwards apparatus is not truly applicable to the medical apparatuses that are improved by Applicant's claimed invention. The Edwards apparatus includes a rotary blade must be calibrated by the nurse, or someone, as the patient would not have the proper tools to perform such calibration. Additionally, Edwards fails to discuss sending verbal messages to the patient based on a result achieved by the patient with the Edwards' device.

Applicant's definition for medical apparatus is "any medical device that requires the presence of a nurse (ancillary medical assistance), to encourage the patient to use the device and/or to guide the patient during the use of the device for the purpose of measuring medical performance by the patient" The claimed invention improves on these devices by adding a humanlike voice to do the work the nurse would normally be required to do. Patents and inventions that require other services from the nurse (assistant), such as, but not limited to, calibration with tools,

assembly, are considered outside of the definition of medical apparatus.

Edwards fails to provide for electronically performing mathematical and logical calculations and decision logic, as performed by Applicant's claimed functional program. At most, Edwards, only teaches the ability to give verbal instructions for the device, which would be the same as having a patient read the instructions for the device. Edwards does not eliminate the ancillary medical assistant, which Edwards still requires to encourage and guide the patient using the Edwards' device.

The claimed invention is directed to the use of audible, verbal employment of a humanlike voice to encourage usage and provide guidance by this function. Though the claimed invention can be attached to medical device or within the medical device, it can also be used separately, such as; a ventilator used by the patient to bring moisture to the lungs, "post operative", by simply coming on, at the proper time and telling the patient to use the mask for breathing the medicated air for a predetermined time. The present invention can also provide a positive phrase, such as; "take another breathe" or something encouraging and will be able to turn off or on as programmed in the microcontroller unit. Thus, the claimed invention can go into "sleep mode" through the timing device provided by the functional program to come back on later at the appropriate time to lead the patient through another therapeutic procedure according to the medical apparatus being used. As an example, the claimed invention as needed can turn on the oxygen tank by the bed during the session, until the patient no longer needs the therapy.

Additionally, in claims 30 and 31, a data transmitting and storage capability is claimed to provide a doctor with knowledge of the patient's performance at whatever location is convenient for the doctor to assess the appropriate treatment, as needed,

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according to the data retrieved by the physician, such as by a palm pilot or CP, but not limited to these devices.

The Edwards patent relates to a Spirometer Apparatus which is used prior to surgery to test the health of the patient's lungs. Even in a hospital setting the Edwards Spirometer is used as a test to determine whether the patient has pneumonia, Emphysema and/or other lung illnesses, which requires ancillary medical assistance. Thus, even in a hospital setting, the Edwards apparatus fails to fall under the medical apparatus of the present invention.

Applicant's claimed device relates to all medical devices requiring ancillary medical assistance to ensure usage and proper performance of a required procedure. By continuously prompting and enticing the patient to use whatever type of medical apparatus is being deployed; the patient is more likely to use the medical apparatus, which in turn speeds up the patient's recovery and eliminates ancillary medical personnel assistance. Furthermore, the claimed medical apparatus continues to send prompting verbal messages to the patient until the patient performs the required procedure. This claimed feature further increases the usage of the medical apparatus and does not require any additional time of the ancillary medical personnel for these subsequent prompting messages. Edwards fails to disclose or teach this claimed feature. Furthermore, given the nature of use of the Edwards Spirometer, there is no need or advantage to provide a prompting component to the Edwards device.

Additionally, Edwards only provides verbal instructions on how to use a Spirometer. Applicant's unique invention transmits audible verbal messages to a patient (user), which prompts or encourages the patient to pick up the medical apparatus and use it, without requiring ancillary medical personnel to be physically present with the patient. Applicant's claimed verbal

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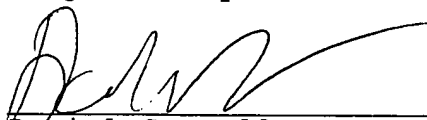
messages can also send encouragement messages to the user based on a result achieved by the user in performing the required procedure. Again these claimed messages are not merely instructing a user on how to operate the medical apparatus. Rather, Applicant's claimed messages encourage or prompt the user in order to increase continuous usage of the medical apparatus by the user. Additionally, by verbally indicating to the user what the measurement is from performing the required procedure with certain of the medical apparatuses, Applicant's claimed medical apparatus can be used by a user who is blind or has trouble seeing. Edwards also fails to teach of a means for preventing messages from being transmitted under certain conditions as claimed by Applicant.

In view of the above, Applicant respectfully requests that the Examiner withdraw the citation of Edwards against the claims of the patent.

Applicant has completely responded to the Office Action dated July 28, 2005. Favorable action is respectfully requested.

If there are any additional charges, including extension of time, please bill our Deposit Account No. 503180.

Respectfully submitted,



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